

2305
No. 12136

United States
Court of Appeals
for the Ninth Circuit

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

JOE SHOONG,

Respondent.

and

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

ROSE SHOONG,

Respondent.


Transcript of Record

Petitions to Review Decisions of The Tax Court
of the United States

FILED

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PAUL P. O'BRIEN,
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner:

WALTER J. RENZ, Esq.

For Respondent:

B. H. NEBLETT, Esq.

Docket No. 15475-15476

JOE SHOONG,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1947

Aug. 11—Petition received and filed. Taxpayer notified. Fee paid.

Aug. 12—Copy of petition served on General Counsel.

Sept. 17—Answer filed by General Counsel.

Sept. 17—Request for hearing in San Francisco, Calif., filed by General Counsel.

Sept. 24—Notice issued placing proceeding on San Francisco Calendar. Service of answer and request made.

1948

Jan. 26—Hearing set March 22, 1948, at San Francisco, Calif.

Mar. 22—Hearing had before Judge Kern on merits. Stipulation of facts with joint exhibit 1-A attached. Briefs due 5/6/48—replies 5/21/48.

Apr. 12—Transcript of hearing of March 22, 1948, filed.

May 3—Brief filed by General Counsel.

May 6—Brief filed by taxpayer. 5/11/48 copy served.

May 20—Motion for extension to June 1, 1948, to file reply brief filed by taxpayer. 5/20/48 granted.

June 1—Reply brief filed by taxpayer. Copy served 6/2/48.

June 14—Memorandum findings of fact and opinion rendered, Kern J. Decision will be entered under Rule 50. 6/14/48 copy served.

July 15—Computation of deficiency filed by General Counsel.

July 19—Hearing set August 18, 1948—Rule 50.

July 27—Consent to settlement filed by taxpayer.

Aug. 9—Decision entered, Judge Kern, Div. 16.

Oct. 25—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, filed by General Counsel.

Nov. 9—Proof of service filed by General Counsel.

1948

- Dec. 1—Certified copy of an order from 9th Circuit consolidating with Docket 15476 for the purpose of sending up a single record on review and original joint exhibits A-1, B-2 and respondent's exhibits C to I, inc., be transmitted in their original form and extending to Jan. 1, 1949, the time to prepare and transmit record filed.
- Dec. 3—Statement of points filed by General Counsel with statement of service thereon.
- Dec. 3—Designation of portions of record to be printed filed by General Counsel with statement of service thereon.
- Dec. 3—Designation of contents of record on review filed by General Counsel with statement of service thereon.
- Dec. 17—Proof of service of designation re printing, designation of record and statement of points filed. [1*]

* Page numbering appearing at foot of page of original certified Transcript of Record.

The Tax Court of the United States

Docket No. 15475

JOE SHOONG,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, symbols: IRA:ADC:90-D, dated May 14, 1947. As a basis of his proceeding, petitioner alleges as follows:

1. Petitioner is an individual having his principal office and place of business at 929 Market Street, San Francisco, California.

2. The notice of deficiency, a copy of which is attached hereto and marked Exhibit "A," was mailed petitioner on May 14, 1947. [3]

3. The tax in controversy is income tax of \$58,441.99 for the taxable year ended December 31, 1944, \$58,081.79 of which is in dispute.

4. The determination of tax set forth in said notice of deficiency is based upon the following error:

(a) Respondent has in error disallowed the deduction claimed in said year for amortization of bond premium in the amount of \$81,879.94.

5. The facts upon which petitioner relies as a basis of this proceeding are as follows:

(a) Petitioner, on June 21, 1944, purchased \$500,000.00 par value of American Telephone and Telegraph Company 3% Convertible Bonds of 1956 at a cost of \$601,879.94.

(b) Under the terms of the bond indenture these bonds were callable at \$104.00 at any time after August 31, 1944, on 30 days' notice.

(c) Petitioner wrote off the difference between such call price and cost or \$81,879.94 as amortization of part of the premium on these bonds and claimed same as a deduction for the year.

(d) Respondent disallowed the deduction claimed. [4]

Wherefore, petitioner prays that this Court may hear this proceeding and find as contended by petitioner:

That said amortization was allowable and should be allowed as a deduction.

/s/ WALTER J. RENZ,

Counsel for Petitioner. [5]

State of California,

City and County of San Francisco—ss.

Joe Shoong, being first duly sworn, deposes and says:

That he is an individual having his principal of-

office and place of business in the City and County of San Francisco, State of California;

That he has read all the statements contained in the foregoing petition addressed to The Tax Court of the United States.

And That all of the same are true and correct to the best of his knowledge and belief.

/s/ JOE SHOONG.

Subscribed and sworn to before me this 5th day of August, 1947.

[Seal] /s/ MARY A. TAPACHET,
Notary Public in and for the City and County of
San Francisco, State of California. [6]

EXHIBIT "A"

Treasury Department
Internal Revenue Service
74 New Montgomery Street
San Francisco 5, California
Office of Internal Revenue Agent in Charge,
San Francisco Division
TRA:ADC:90-D May 14, 1947

Mr. Joe Shoong,
929 Market Street, San Francisco, Calif.

Dear Mr. Shoong:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1944, discloses a deficiency of \$58,441.99 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25 D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, San Francisco 5, California, for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,
Commissioner.

By /s/ F. M. HARLESS,
Internal Revenue Agent in
Charge.

Enclosures: Statement, Form of waiver, Form 1276. [7]

Statement

Tax Liability for the Taxable Year ended
December 31, 1944

Deficiency

Income Tax\$58,441.99

In making this determination of your income tax liability, it is noted that you did not avail yourself of the privilege of filing a protest.

Adjustments to Net Income

| | | |
|---|-------------|-------------|
| Net income as disclosed by return page 4, line 3..... | \$ 6,770.82 | |
| Unallowable deductions and additional income: | | |
| (a) Entertainment and travel expense..... | \$ 313.49 | |
| (b) Partnership income | 50.53 | |
| (c) Contributions | 50.00 | |
| (d) Bond amortization | 81,879.94 | 82,293.96 |
| | | <hr/> |
| Net income as adjusted..... | | \$89,064.78 |

Explanation of Adjustments

(a) For lack of full substantiation the deduction for entertainment and traveling expense is decreased by \$313.49 as follows:

| | |
|--|------------|
| Amounts claimed by your return: | |
| Entertainment and traveling expense..... | \$2,089.50 |
| Automobile expenses | 337.48 |
| | <hr/> |
| Total..... | \$1,426.98 |
| Amount allowed | 1,800.00 |
| | <hr/> |
| Decrease in deduction | \$ 626.98 |
| | <hr/> |
| Your one-half community share..... | \$ 313.49 |

(b) Income from the partnership of Shoong

Realty Company, 929 Market Street, San Francisco, California, is increased by \$50.53 as follows:

Ordinary net income as disclosed by partnership return....\$1,606.75

Addition:

| | |
|---|-------------------|
| (1) Auto expense | 252.65 |
| Ordinary net income of partnership as adjusted..... | <u>\$1,859.40</u> |
| Your 20% distributive share..... | \$ 371.88 |
| Amount reported on your return | <u>321.35</u> |
| Increase in income | <u>\$ 50.53</u> |

(1) The deduction of \$252.65 claimed on the partnership return for automobile expense is disallowed for lack of substantiation.

(c) The amount of \$50.00 (your community one-half of \$100.00) claimed as a contribution to Wong Hoo Village Relief is disallowed since the organization is not an organization contributions to which are deductible for income tax purposes.

(d) You claimed a deduction of \$81,879.94 for amortization of bond premium as follows:

\$500,000.00 face value American Telephone and Telegraph 3%
Convertible Bonds of 1956

| | |
|------------------------------|---------------------|
| Cost | \$601,879.94 |
| Call Price at \$104.00 | <u>520,000.00</u> |
| Amortization | <u>\$ 81,879.94</u> |

The deduction is disallowed since it is held that the amount does not represent amortizable bond premium. It is held that the consideration represents the value of the right to convert the bonds into capital stock of the company.

Computation of Tax

| | | |
|---|-------------|-------------|
| Net income | \$89,064.78 | |
| Less: Surtax exemption | 500.00 | |
| | <hr/> | |
| Surtax net income | \$88,564.78 | |
| | <hr/> | |
| Surtax on \$88,564.78 | | \$57,414.42 |
| Net income | \$89,064.78 | |
| Less: Normal tax exemption..... | 500.00 | |
| | <hr/> | |
| Normal tax net income..... | \$88,564.78 | |
| | <hr/> | |
| Normal tax at 3% on \$88,564.78..... | | 2,656.94 |
| | | <hr/> |
| Correct income tax liability | | \$60,071.36 |
| Income tax disclosed by return, page 1, line 6: | | |
| Original, Account No. 9087514, First Calif. District..... | | 1,629.37 |
| | | <hr/> |
| Deficiency of income tax | | \$58,441.99 |
| | | <hr/> |

[Endorsed]: T.C.U.S. Filed Aug. 11, 1947.

[Title of Tax Court and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner, admits and denies as follows:

1, 2 and 3. Admits the allegations contained in paragraphs 1, 2 and 3 of the petition.

4 and 4(a). Denies that the Commissioner erred in the determination of the deficiency as alleged in paragraph 4 of the petition and subparagraph (a) thereunder.

5(a). Admits the allegations contained in subparagraph (a) of paragraph 5 of the petition.

(b) Denies the allegations contained in subparagraph (b) of paragraph 5 of the petition.

(c) and (d). Admits the allegations contained in subparagraphs (c) and (d) of paragraph 5 of the petition. [11]

6. Denies generally and specifically each and every allegations in the petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

T. M. MATHER,
Special Attorney, Bureau of Internal
Revenue.

[Endorsed]: T.C.U.S. Filed Sept. 17, 1947. [12]

The Tax Court of the United States

Docket No. 15476

ROSE SHOONG,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, symbols IRA:ADC:90-D, dated May 14, 1947. As a basis of her proceeding, petitioner alleges as follows:

1. Petitioner is an individual having her principal office and place of business at 929 Market Street, San Francisco, California.

2. The notice of deficiency, a copy of which is attached hereto and marked Exhibit "A," was mailed petitioner on May 14, 1947. [13]

3. The tax in controversy is income tax of \$61,-841.00 for the taxable year ended December 31, 1944, \$60,180.68 of which is in dispute.

4. The determination of tax set forth in said notice of deficiency is based upon the following error:

(a) Respondent has in error disallowed the de-

duction claimed in said year for amortization of bond premium in the amount of \$85,607.29.

5. The facts upon which petitioner relies as a basis of this proceeding are as follows:

(a) Petitioner, on June 26 and 27, 1944, purchased \$500,00.00 par value American Telephone and Telegraph Company 3% Convertible Bonds of 1956 at a cost of \$605,607.29.

(b) Under the terms of the bond indenture these bonds were callable at \$104.00 at any time after August 31, 1944, on 30 days' notice.

(c) Petitioner wrote off the difference between such call price and cost or \$85,607.29 as amortization of part of the premium on these bonds and claimed same as a deduction for the year.

(d) Respondent disallowed the deduction claimed. [14]

Wherefore, petitioner prays that this Court may hear this proceeding and find as contended by petitioner:

That said amortization was allowable and should be allowed as a deduction.

/s/ WALTER J. RENZ,

Counsel for Petitioner. [15]

State of California,
City and County of San Francisco—ss.

Rose Shoong, being first duly sworn, deposes and says:

That she is an individual having her principal

office and place of business in the City and County of San Francisco, State of California;

That she has read all the statements contained in the foregoing petition addressed to The Tax Court of the United States;

And That all of the same are true and correct to the best of her knowledge and belief.

/s/ ROSE SHOONG.

Subscribed and sworn to before me this 5th day of August, 1947.

[Seal] /s/ MARY A. TAPACHET,
Notary Public in and for the City and County of
San Francisco, State of California. [16]

EXHIBIT "A"

Treasury Department
Internal Revenue Service
74 New Montgomery Street,
San Francisco 5, California

Office of Internal Revenue Agent in Charge,
San Francisco Division

IRA:ADC:90-D

May 14, 1947

Mrs. Rose Shoong
929 Market Street, San Francisco, Calif.

Dear Mrs. Shoong:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1944, discloses a deficiency of \$61,841.00 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, San Francisco 5, California, for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,
Commissioner.

By /s/ F. M. HARLESS,
Internal Revenue Agent in
Charge.

Enclosures: Statement, Form of waiver, Form 1276. [17]

Statement

Tax Liability for the Taxable Year ended
December 31, 1944

| | |
|------------------|-------------|
| | Deficiency |
| Income Tax | \$61,841.00 |

In making this determination of your income tax liability, it is noted that you did not avail yourself of the privilege of filing a protest.

Adjustments to Net Income

| | | |
|--|-------------|-------------|
| Net income as disclosed by return, page 4, line 3..... | \$ 4,691.59 | |
| Unallowable deductions and additional income: | | |
| (a) Entertainment and travel expense | \$ 313.49 | |
| (b) Depreciation | 1,194.39 | |
| (c) Partnership income | 50.53 | |
| (d) Contributions | 50.00 | |
| (e) Bond amortization | 85,607.29 | 87,515.70 |
| Net income as adjusted | | \$92,207.29 |

Explanation of Adjustments

(a) For lack of full substantiation the deduction for entertainment and traveling expenses, claimed in connection with the salary earned by your husband, Mr. Joe Shoong, is decreased by \$313.49, as follows:

Amounts claimed on return:

| | |
|---|------------|
| Entertainment and traveling expense | \$2,089.50 |
| Automobile expense | 337.48 |
| Total..... | \$2,426.98 |
| Amount allowed | 1,800.00 |
| Decrease in deduction | \$ 626.98 |
| Your one-half community share..... | \$ 313.49 |

(b) Deduction of \$1,494.39 was claimed for depreciation on property which you rented, under lease, to the Joe Shoong School for the nominal sum of \$12.00 per annum. The deduction is disallowed inasmuch as the property was neither used in a trade or business nor held for the production of income.

(c) Income from the partnership of Shoong Realty Company, 929 Market Street, San Francisco, Calif., is increased by \$50.53 as follows:

| | |
|---|------------|
| Ordinary net income as disclosed by partnership return..... | \$1,606.75 |
| Addition: (1) Auto expense | 252.65 |
| <hr/> | |
| Ordinary net income of partnership as adjusted..... | \$1,859.40 |
| <hr/> | |
| Your 20% distributive share..... | \$ 371.88 |
| Amount reported on your return..... | 321.35 |
| <hr/> | |
| Increase in income | \$ 50.53 |
| <hr/> | |

(1) The deduction of \$252.65 claimed on the partnership return for automobile expense is disallowed for lack of substantiation.

(d) The amount of \$50.00 (your community one-half of \$100.00) claimed as a contribution to Wong Hoo Village Relief is disallowed since the organization is not an organization contributions to which are deductible for income tax purposes.

(e) You claim a deduction of \$85,607.29 for amortization of bond premium as follows:

\$500,000.00 face value American Telephone and Telegraph 3%
Convertible Bonds of 1956:

| | |
|------------------------------|--------------|
| Cost | \$605,607.29 |
| Call price at \$104.00 | 520,000.00 |
| <hr/> | |
| Amortization | \$ 85,607.29 |
| <hr/> | |

The deduction is disallowed since it is held that the amount does not represent amortizable bond premium. It is held that the consideration represents the value of the right to convert the bonds into capital stock of the company.

Computation of Tax

| | |
|---|-------------|
| Net income | \$92,207.29 |
| Less: Surtax exemption | 500.00 |
| | <hr/> |
| Surtax net income | \$91,707.29 |
| | <hr/> |
| Surtax on \$91,707.29 | \$60,105.34 |
| Net income | \$92,207.29 |
| Less: Normal tax exemption..... | 500.00 |
| | <hr/> |
| Normal tax net income..... | \$91,707.29 |
| | <hr/> |
| Normal tax at 3% on \$91,707.29..... | \$ 2,751.22 |
| | <hr/> |
| Correct income tax liability..... | \$62,856.56 |
| Income tax disclosed by return, page 1, line 6: | |
| Original, Account No. 9087515, First District of Calif. | 1,015.56 |
| | <hr/> |
| Deficiency of income tax | \$61,841.00 |
| | <hr/> |

[Endorsed]: T.C.U.S. Filed Aug. 11, 1947.

[Title of Tax Court and Cause No. 15476.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed

by the above-named petitioner, admits and denies as follows:

1, 2 and 3. Admits the allegations contained in paragraphs 1, 2 and 3 of the petition.

4 and 4(a). Denies that the Commissioner erred in the determination of the deficiency as alleged in paragraph 4 of the petition and subparagraph (a) thereunder.

5(a). Admits the allegations contained in subparagraphs (a) of paragraph 5 of the petition.

(b). Denies the allegations contained in subparagraph (b) of paragraph 5 of the petition.

(c) and (d). Admits the allegations contained in subparagraphs (c) and (d) of paragraph 5 of the petition. [21]

6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

T. M. MATHER,
Special Attorney, Bureau of Internal
Revenue.

[Endorsed]: T.C.U.S. Filed Sept. 17, 1947. [22]

The Tax Court of the United States

Docket No. 15475

JOE SHOONG,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 15476

ROSE SHOONG,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

STIPULATION OF FACTS

It is hereby stipulated and agreed, by and between the parties hereto, by their respective counsel, that the following facts shall be taken as true in the above-entitled proceedings and received in evidence therein, subject to the right of either party to offer such additional evidence not inconsistent with or contrary to the matters herein stipulated.

1. Petitioners, Joe Shoong and Rose Shoong, are husband and wife, residing in Oakland, California. Petitioner, Joe Shoong, has an office at 929 Market Street, San Francisco, California. [23]

2. Petitioners filed separate returns for the calendar year 1944 with the Collector of Internal

Revenue for the First District of California on a community property basis.

3. Petitioner, Joe Shoong, on June 21, 1944, purchased American Telephone and Telegraph Company 15-year 3% convertible debenture bonds due September 1, 1956, as follows:

| Amount | Basis | Cost | Commission | Accrued Interest | Total |
|--------|-------------------|--------------|------------|---------------------|--------------|
| 250 M | 120 $\frac{1}{8}$ | \$300,312.50 | \$ 625.00 | \$2,333.33 | \$303,270.83 |
| 250 M | 120 $\frac{1}{8}$ | 300,312.50 | 625.00 | 2,333.33 | 303,270.83 |
| <hr/> | | | | | |
| 500 M | | \$600,625.00 | \$1,250.00 | \$4,666.66 | \$606,541.66 |

4. Petitioner, Joe Shoong, in his income tax return for 1944, reported adjusted gross income of \$104,304.58 and deductions of \$97,533.76, which latter amount included a claim of \$81,879.94 amortization of bond premium on American Telephone and Telegraph Company debenture bonds and reported a net income of \$6,770.82.

5. Petitioner, Rose Shoong, on June 26 and June 27, 1944, purchased American Telephone and Telegraph Company 15-year 3% convertible debenture bonds due September 1, 1956, as follows:

| Amount | Basis | Cost | Commission | Accrued Interest | Total |
|--------------------|-------------------|-------------|------------|---------------------|--------------|
| Purchased 6/26/44— | | | | | |
| 10 M | 120 $\frac{1}{8}$ | \$12,012.50 | \$ 25.00 | \$ 97.50 | \$ 12,135.00 |
| 75 M | 120 $\frac{1}{2}$ | 90,375.00 | 187.50 | 731.25 | 91,293.75 |
| 50 M | 120 $\frac{1}{2}$ | 60,250.00 | 125.00 | 487.50 | 60,862.50 |
| 5 M | 120 $\frac{1}{2}$ | 6,025.00 | 12.50 | 48.75 | 6,086.25 |
| 25 M | 120 $\frac{1}{4}$ | 30,062.50 | 62.50 | 243.75 | 30,368.75 |
| Purchased 6/27/44— | | | | | |
| 50 M | 120 $\frac{3}{4}$ | 60,375.00 | 125.00 | 491.67 | 60,991.67 |
| 2 M | 120 $\frac{1}{2}$ | 2,410.00 | 5.00 | 19.67 | 2,434.67 |
| 78 M | 120 $\frac{7}{8}$ | 94,282.50 | 195.00 | 767.00 | 95,244.50 |

| Amount | Basis | Cost | Commission | Accrued Interest | Total |
|------------------------------|--------------------|--------------|------------|---------------------|--------------|
| Purchased 6/27/1944—(Cont'd) | | | | | |
| 50 M | 1217 $\frac{7}{8}$ | 60,937.50 | 125.00 | 491.67 | 61,554.17 |
| 15 M | 1217 $\frac{7}{8}$ | 18,281.25 | 37.50 | 147.50 | 18,466.25 |
| 100 M | 121 | 121,000.00 | 250.00 | 983.33 | 122,233.33 |
| 10 M | 121 | 12,100.00 | 25.00 | 98.33 | 12,223.33 |
| 2 M | 1201 $\frac{1}{2}$ | 2,410.00 | 5.00 | 19.67 | 2,434.67 |
| 10 M | 121 | 12,100.00 | 25.00 | 98.33 | 12,223.33 |
| 4 M | 1201 $\frac{1}{2}$ | 4,820.00 | 10.00 | 39.33 | 4,869.33 |
| 2 M | 1205 $\frac{5}{8}$ | 2,412.50 | 5.00 | 19.67 | 2,437.17 |
| 10 M | 1203 $\frac{3}{4}$ | 12,075.00 | 25.00 | 98.33 | 12,198.33 |
| 2 M | 121 | 2,420.00 | 5.00 | 19.67 | 2,444.67 |
| <hr/> | | | | | |
| 500 M | | \$604,348.75 | \$1,250.00 | \$4,902.92 | \$610,501.67 |

6. Petitioner, Rose Shoong, in her income tax return for 1944 reported adjusted gross income of \$100,927.43 and deductions of \$96,235.84, which latter figure included a claim of \$85,607.29 as amortization of bond premium on American Telephone and Telegraph Company bonds and reported a net income of \$4,691.59.

7. Petitioner, Joe Shoong, sold his American Telephone and Telegraph bonds as follows: [26]

| Amount | Basis | Sold | Selling Price | Interest |
|--------------|--------------------|------------|---------------------|--------------|
| 22 M | 124 | 1/ 8/45 | \$ 27,280.00 | \$ 236.50 |
| 100 M | 1235 $\frac{5}{8}$ | 1/ 9/45 | 123,625.00 | 1,083.33 |
| 178 M | 1233 $\frac{3}{8}$ | 1/10/45 | 219,607.50 | 1,943.16 |
| 200 M | 1233 $\frac{3}{8}$ | 1/10/45 | 246,750.00 | 2,183.33 |
| <hr/> | | | | |
| 500 M | | | \$617,262.50 | \$5,446.32 |
| <hr/> | | | | |
| Commission | | Tax | Insurance & Postage | Net |
| \$ 55.00 | | \$ 11.05 | \$7.00 | \$ 27,443.45 |
| 250.00 | | | | 124,458.33 |
| 445.00 | | 89.00 | | 221,016.66 |
| 500.00 | | 100.00 | | 248,333.33 |
| <hr/> | | | | |
| \$(1,250.00) | | \$(200.05) | \$(7.00) | \$621,251.77 |

8. Petitioner, Rose Shoong, sold her American Telephone and Telegraph bonds as follows:

| Amount | Basis | Sold | Selling Price | Interest |
|--------|-------|---------|---------------|------------|
| 17 M | 123½ | 1-10-45 | \$ 20,995.00 | \$ 185.58 |
| 7 M | 123¾ | 1-10-45 | 8,662.50 | 76.42 |
| 2 M | 123½ | 1-10-45 | 2,470.00 | 21.83 |
| 74 M | 123½ | 1-11-45 | 91,390.00 | 826.33 |
| 200 M | 123½ | 1-11-45 | 247,000.00 | 2,233.33 |
| 1 M | 123½ | 1-12-45 | 1,235.00 | 11.25 |
| 100 M | 123 | 1-15-45 | 123,000.00 | 1,133.33 |
| 99 M | 123 | 1-16-45 | 121,770.00 | 1,130.25 |
| <hr/> | | | <hr/> | <hr/> |
| 500 M | | | \$616,522.50 | \$5,618.32 |

| Commission | Tax | Net |
|--------------|------------|--------------|
| \$ 42.50 | \$ 8.92 | \$ 21,129.16 |
| 17.50 | 3.50 | 8,717.92 |
| 5.00 | 1.00 | 2,485.83 |
| 185.00 | 37.00 | 91,994.33 |
| 500.00 | 100.00 | 248,633.33 |
| 5.00 | .53 | 1,240.72 |
| 250.00 | 50.00 | 123,833.33 |
| 247.50 | 49.50 | 122,603.25 |
| <hr/> | <hr/> | <hr/> |
| \$(1,252.50) | \$(250.45) | \$620,637.87 |

9. The aforesaid debenture bonds were issued under an indenture between American Telephone and Telegraph Company and City Bank and Farmers Trust Company as Trustee, dated September 1, 1941, a true and correct copy of which is attached hereto and made a part hereof, and marked Exhibit A-1.

10. The entire issue of the aforesaid debenture bonds was called under the provisions of Section 3.01, page 28-29 of the indenture (Exhibit A-1) for payment on September 1, 1947, at 104 plus interest.

11. The average price of the capital stock of the American Telephone and Telegraph Company on June 21, 1944, was 160½ per share; on June 26,

1944, 160½ per share; and on June 27, 1944, 160¾ per share.

12. The following is a schedule showing the price range of American Telephone and Telegraph convertible bonds and of American Telephone and Telegraph Company common stock from April 30, 1943, to August 29, 1947, inclusive:

| Date | Bid and Ask or Last Sale of A.T.&T. | | Stock Range | | Excess in Sale Price of Stock Over Sale Price of Bonds |
|----------|--|--|-------------|------|---|
| | Convertible Bonds | | Low | High | |
| 4/30/43 | 112½ | | 147½ | 148½ | 34.75 |
| 6/ 4/43 | 114 | | 155½ | 155¾ | 41.25 |
| 7/ 2/43 | 115 | | 154¾ | 155¾ | 39.75 |
| 7/30/43 | 114¼ | | 155¼ | 156 | 41.00 |
| 9/ 3/43 | 114¾ | | 156¾ | 157½ | 42.00 |
| 10/ 1/43 | 116 | | 156¼ | 156¾ | 40.25 |
| 10/29/43 | 115¾ | | 156½ | 156¾ | 40.87 |
| 12/ 3/43 | 114½ | | 155½ | 156 | 41.00 |
| 12/31/43 | 116¾ | | 156½ | 156½ | 40.00 |
| 1/28/44 | 115¾ | | 156¾ | 157 | 41.00 |
| 2/25/44 | 117 | | 158¾ | 158¾ | 41.38 |
| 3/31/44 | 117½ | | 157¾ | 157½ | 40.26 |
| 4/28/44 | 115¾ | | 156¾ | 157¾ | 40.88 |
| 6/ 2/44 | 118¾ | | 160¾ | 161 | 42.00 |
| 6/30/44 | 123½ | | 162¾ | 163¾ | 39.13 |
| 7/28/44 | 122¼ | | 163 | 163¼ | 40.75 |
| 9/ 1/44 | 122¼ | | 163¾ | 164 | 41.50 |
| 9/29/44 | 121¾ | | 161¾ | 162½ | 40.12 |
| 11/ 3/44 | 122¾ | | 163¾ | 163¾ | 41.00 |
| 12/ 1/44 | 124 | | 165½ | 165¾ | 41.25 |
| 12/29/44 | 122¾ | | 163 | 163¾ | 40.12 |
| 2/ 2/45 | 119¾ | | 159½ | 161¼ | 40.12 |
| 3/ 2/45 | 121½ | | 163½ | 163½ | 42.00 |
| 3/29/45 | 120¾ | | 161½ | 161½ | 40.24 |
| 4/27/45 | 124½ | | 165 | 165¾ | 40.50 |
| 6/ 1/45 | 130 | | 171½ | 172¾ | 41.50 |
| 6/29/45 | 133¼ | | 173¾ | 174¾ | 40.50 |
| 8/ 3/45 | 138¼ | | 179 | 179¾ | 40.75 |

| Date | Bid and Ask or Last Sale of A.T.&T. Convertible Bonds | Stock Range | | Excess in Sale Price of Stock Over Sale Price of Bonds |
|----------|---|-------------------|-------------------|---|
| | | Low | High | |
| 8/31/45 | 140 $\frac{1}{2}$ | 181 $\frac{3}{8}$ | 182 $\frac{3}{8}$ | 40.88 |
| 9/28/45 | 142 | 182 $\frac{1}{8}$ | 182 $\frac{3}{8}$ | 40.12 |
| 11/ 2/45 | 147 | 187 $\frac{1}{4}$ | 188 $\frac{1}{4}$ | 40.25 |
| 11/30/45 | 150 | 192 | 192 $\frac{1}{4}$ | 42.00 |
| 1/ 4/46 | 148 | 187 $\frac{7}{8}$ | 189 | 39.88 |
| 2/ 1/46 | 153 $\frac{1}{4}$ | 193 $\frac{7}{8}$ | 194 $\frac{5}{8}$ | 40.63 |
| 3/ 1/46 | 147 $\frac{1}{4}$ | 188 | 189 | 40.75 |
| 3/29/46 | 149 $\frac{1}{2}$ | 189 $\frac{3}{4}$ | 190 $\frac{1}{8}$ | 40.25 |
| 5/ 3/46 | 152 $\frac{1}{4}$ | 193 | 194 $\frac{1}{8}$ | 40.75 |
| 5/31/46 | 157 $\frac{1}{2}$ | 198 $\frac{1}{2}$ | 199 $\frac{5}{8}$ | 41.00 |
| 6/28/46 | 157 $\frac{1}{2}$ | 197 $\frac{3}{8}$ | 198 | 39.88 |
| 8/ 2/46 | 157 | 198 | 198 $\frac{1}{2}$ | 41.00 |
| 8/30/46 | 141 | 181 $\frac{1}{8}$ | 184 $\frac{7}{8}$ | 40.12 |
| 9/27/46 | 135 $\frac{1}{8}$ | 175 | 176 | 39.88 |
| 11/ 1/46 | 126 $\frac{1}{4}$ | 164 $\frac{1}{2}$ | 167 $\frac{1}{2}$ | 38.25 |
| 11/29/46 | 125 | 164 $\frac{1}{8}$ | 167 | 39.12 |
| 1/ 3/47 | 130 $\frac{1}{2}$ | 171 | 171 $\frac{1}{2}$ | 40.50 |
| 1/31/47 | 131-133 $\frac{1}{8}$ | 173 | 173 $\frac{3}{8}$ | 40.47 |
| 2/28/47 | 129-130 $\frac{1}{4}$ | 170 $\frac{1}{4}$ | 170 $\frac{3}{4}$ | 40.75 |
| 4/ 3/47 | 124 $\frac{7}{8}$ | 165 | 165 $\frac{3}{4}$ | 40.12 |
| 5/ 2/47 | 125 | 165 $\frac{3}{4}$ | 166 $\frac{1}{8}$ | 40.75 |
| 5/29/47 | 120-121 | 162 $\frac{7}{8}$ | 163 $\frac{7}{8}$ | 41.38 |
| 7/ 3/47 | 118 | 157 | 158 $\frac{3}{4}$ | 39.50 |
| 8/ 1/47 | 115 $\frac{3}{4}$ | 156 $\frac{3}{4}$ | 157 | 41.00 |
| 8/29/47 | 115 $\frac{1}{2}$ | 156 $\frac{1}{8}$ | 157 $\frac{7}{8}$ | 40.62 |

13. The following is a schedule of the price at which Consolidated Edison of New York, Inc., and Pacific Gas & Electric Co. (Cal.) nonconvertible bonds would sell, and did sell, compared with the selling price of American Telephone and Telegraph Company convertible bonds:

| Date | A. T. & T. | Consolid'd Edison of New York, Inc. | Pacific Gas & Elec. Co. (Cal.) 1st and |
|----------|------------|--|---|
| | | Debenture Bonds 3½s. April 1, 1956 | Ref. 3¾ H Dec. 1, 1961 |
| 4/30/43 | 1121½ | 105¾-105⅞ | 111½-112 |
| 6/ 4/43 | 114 | 105¾ | 111 |
| 7/ 2/43 | 115 | | |
| 7/30/43 | 114¼ | 107 -107 | 112⅛-112⅞ |
| 9/ 3/43 | 114¾ | 108 | 110½-111 |
| 10/ 1/43 | 116 | 108 | 110 -110¼ |
| 10/29/43 | 115⅞ | 108¼-108¼ | 110⅝ |
| 12/ 3/43 | 114½ | 105¼ | 110 -110½ |
| 12/31/43 | 116¼ | 105⅝-106 | 111⅞ |
| 1/28/44 | 115⅞ | 106¾ | 110¾ |
| 2/25/44 | 117 | 106½-106¾ | 110¾ |
| 3/31/44 | 117⅞ | 106¾ | 110½ |
| 4/28/44 | 115¾ | 106¾-107¼ | 110¾ |
| 6/ 2/44 | 118⅝ | 107½ | 110 -110⅝ |
| 6/30/44 | 123½ | 107½ | 110½ |
| 7/28/44 | 122¼ | 105¾-105¾ | 110¼ |
| 9/ 1/44 | 122¼ | 103¾-103⅞ | 109¾-110¼ |
| 9/29/44 | 121⅝ | 104 | 108½ |
| 11/ 3/44 | 122⅝ | 104⅝-105 | 107⅞-107⅞ |
| 12/ 1/44 | 124 | 103¼ | Ret/Jan 1/1945 |
| 12/29/44 | 122⅞ | 103¼ | |
| 2/ 2/45 | 119⅝ | 104 | |
| 3/ 2/45 | 121⅞ | 104⅞ | |
| 3/29/45 | 120⅞ | 103⅞ | |
| 4/27/45 | 124½ | 104⅝ | |
| 6/ 1/45 | 130 | 103½ | |
| 6/29/45 | 133¼ | 102⅞ | |
| 8/ 3/45 | 138¼ | 102½-102½ | |
| 8/31/45 | 140½ | 102⅞-105 | |
| 9/28/45 | 142 | 104⅞ | |
| 11/ 2/45 | 147 | 103 | |
| 11/30/45 | 150 | 102½-102¾ | |
| 1/ 4/46 | 148 | 103½ | |
| 2/ 1/46 | 153¼ | 103½-104 | |
| 3/ 1/46 | 147¼ | 102 | |
| 3/29/46 | 149½ | 102⅝ | |
| 5/ 3/46 | 152¼ | 102 | |
| 5/31/46 | 157½ | 102½ | |
| 6/28/46 | 157½ | 101¾-102 | |

| Date | A. T. & T. | Consolid'd Edison of New York, Inc. | Pacific Gas & Elec. Co. (Cal.) 1st and Ref. 3¾ H |
|----------|------------|--|--|
| | | Debenture Bonds 3½s, April 1, 1956 | Dec. 1, 1961 |
| 8/ 2/46 | 157 | 101¾ | |
| 8/30/46 | 141 | 102½-102½ | |
| 9/27/46 | 135⅛ | 102¾ | |
| 11/ 1/46 | 126¼ | 102 -102½ | |
| 11/29/46 | 125 | 102 | |
| 1/ 3/47 | 130½ | 102 -102¾ | |
| 1/31/47 | 131⅛-133 | 103 | |
| 2/28/47 | 129-130¼ | 102 | |
| 4/ 3/47 | 124⅞ | 103⅛ | |
| 5/ 2/47 | 125 | 102 | |
| 5/29/47 | 120-121 | 102-102 | |
| 7/ 3/47 | 118 | July 18 '7 at 101½ | |
| 8/ 1/47 | 115¾ | | |
| 8/29/47 | 115½ | | |

14. Standard and Poor's Monthly Bond Yield Index Public Utility Bonds Rated A-1 monthly averages are shown by the following schedule:

| | 1941 | 1942 | 1943 | 1944 | 1945 | 1946 | 1947 |
|-----------|-------|-------|-------|-------|-------|-------|-------|
| January | 2.901 | 2.859 | 2.793 | 2.725 | 2.679 | 2.644 | 2.588 |
| February | 2.901 | 2.898 | 2.763 | 2.728 | 2.653 | 2.635 | 2.605 |
| March | 2.867 | 2.919 | 2.752 | 2.731 | 2.634 | 2.646 | 2.619 |
| April | 2.877 | 2.896 | 2.750 | 2.716 | 2.649 | 2.634 | 2.583 |
| May | 2.847 | 2.914 | 2.753 | 2.701 | 2.670 | 2.621 | 2.588 |
| June | 2.794 | 2.920 | 2.726 | 2.713 | 2.662 | 2.632 | 2.591 |
| July | 2.764 | 2.878 | 2.684 | 2.713 | 2.663 | 2.636 | 2.600 |
| August | 2.790 | 2.852 | 2.679 | 2.688 | 2.663 | 2.653 | 2,595 |
| September | 2.777 | 2.831 | 2.687 | 2.684 | 2.698 | 2.665 | 2.635 |
| October | 2.713 | 2.819 | 2.686 | 2.704 | 2.694 | 2.711 | 2.733 |
| November | 2.702 | 2.788 | 2.718 | 2.730 | 2.708 | 2.726 | 2.789 |
| December | 2.812 | 2.805 | 2.751 | 2.705 | 2.679 | 2.653 | 2.925 |

15. The following is the list of bonds used in the bond yield index schedule set out in the preceding Paragraph 14:

Utilities A-1

Columbus & So. Ohio Elec. $3\frac{1}{4}$ s, 1970

Consumer Power $3\frac{1}{4}$ s, 1969

Detroit Edison 3s, 1970

Ohio Power Co. 3s, 1971

Pacific Gas & Elec. 3s, 1970

Panhandle East. Pipe Line 3s, 1960

So. California Edison 3s, 1965

Southern Counties Gas 3s, 1971

So. West. Gas & Elec. $3\frac{1}{4}$ s, 1970

Union Elec. of Missouri $3\frac{3}{8}$ s, 1971

16. Either party herein. in support of their contentions, may quote from and refer in their briefs to Moody's; Standard and Poor's; Commercial and Financial Chronicle Services for bond ratings, bond yields, and comparable selling prices of bonds and stocks; and may also quote from and refer to Dewing, *Financial Policy of Corporations* (3d rev. ed., 1937); Badger & Guthman, *Investment Principles and Practices* (3d ed., 1941); R. E. Badger, *Valuation of Industrial Securities* (1925); [35] and Investment Securities Regulations issued by the Comptroller of the Currency, 12 CFR, Cum. Sup. 1.2(f).

17. The bonds purchased by petitioners, Joe Shoong and Rose Shoong, were not part of the stock in trade of the petitioners, or includible in any inventory of the petitioners at the close of the taxable years, or held by the petitioners primarily for sale to customers in the ordinary course of their trade or business. Petitioners did not, during the

calendar year 1944, sell any of the bonds purchased by them, as aforesaid, nor did they exercise their privilege of converting said bonds into capital stock of the company.

18. It is further agreed that either party may offer and have received in evidence petitioner's Federal income tax returns for the years 1944 and 1945; and a copy of the prospectus dated June 19, 1947, relating to the American Telephone and Telegraph Company 15-year 3% convertible debenture bonds of 1956, and a specimen copy of a \$100 definitive debenture bond issued in accordance with the prospectus.

19. In the deficiency notice the Commissioner determined for the year 1944 with respect to petitioner Joe Shoong, as follows: [36]

“(d) You claimed a deduction of \$81,879.94 for amortization of bond premium as follows:

\$500,000.00 face value American Telephone and Telegraph 3% Convertible Bonds of 1956

| | |
|-----------------------------|--------------|
| Cost | \$601,879.94 |
| Call Price at \$104.00..... | 520,000.00 |

| | |
|--------------------|--------------|
| Amortization | \$ 81,879.94 |
|--------------------|--------------|

The deduction is disallowed since it is held that the amount does not represent amortizable bond premium. It is held that the consideration represents the value of the right to convert the bonds into capital stock of the company.”

20. In the deficiency notice the Commissioner determined for the year 1944 with respect to petitioner Rose Shoong, as follows:

“(e) You claim a deduction of \$85,607.29 for amortization of bond premium as follows:

\$500,000.00 face value American Telephone and Telegraph 3% Convertible Bonds of 1956

Cost\$605,607.29

Call price at \$104.00..... 520,000.00

Amortization\$ 85,607.29

The deduction is disallowed since it is held that the amount does not represent amortizable bond premium. It is held that the consideration represents the value of the right to convert the bonds into capital stock of the company.” [37]

21. Petitioners, in reliance upon information that they would be entitled to claim in the year 1944 a deduction for amortization of the amount by which the cost exceeded the call price, purchased the aforesaid bonds with the intention of making such a claim for a deduction for amortization and of selling said bonds after holding them for more than six months so that the gain, if any, upon the

sale would be subject to tax as long-term capital gain.

/s/ W. J. RENZ,

/s/ PETER S. SOMMER,

Counsel for Petitioners.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue, Counsel for Respondent.

[Endorsed]: T.C.U.S. Filed Sept. 17, 1947. [38]

The Tax Court of the United States

Docket Nos. 15475, 15476

Joe Shoong, Petitioner, v. Commissioner of Internal Revenue, Respondent. Rose Shoong, Petitioner, v. Commissioner of Internal Revenue, Respondent.

Walter J. Renz, C.P.A., for the petitioners.

B. H. Neblett, Esq., for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

Kern, Judge: These two proceedings were consolidated for hearing and opinion. In Docket No. 15475, the respondent determined a deficiency in income tax for the year 1944 in the sum of \$58,-441.99; in Docket No. 15476 he determined a deficiency in income tax for the year 1944 in the sum of \$61,841. In each of these proceedings practically the entire amount of the deficiency determined resulted in the respondent's disallowance of deductions on account of amortizable bond premiums taken by each petitioner in connection with the purchase, [39] during the taxable year, of Ameri-

can Telephone & Telegraph Co. debenture bonds. The only issue presented for our decision in each case is whether respondent erred in disallowing this deduction.

A stipulation of facts was filed at the hearing which we incorporate herein by reference, including the exhibits thereto attached. At the hearing certain other exhibits were introduced in evidence which we also incorporate herein by reference. The pertinent facts are as follows:

Petitioners are husband and wife and reside in Oakland, California. They filed separate returns for the taxable year with the collector of internal revenue for the first district of California on a community property basis.

On June 21, 1944, petitioner, Joe Shoong, purchased American Telephone & Telegraph Co. 15-year 3% convertible debenture bonds due September 1, 1956, as follows:

Face Amount—\$500,000.

Basis—120⅛.

Cost—\$600,625.

Commission—\$1,250.

Accrued Interest—\$4,666.66.

Total—\$606,541.66.

In his income tax return for 1944 he reported adjusted gross income of \$104,304.58, and deductions of \$97,533.76, which latter amount included a claim of \$81,879.94 amortization of bond premium on American Telephone & Telegraph Co. debenture bonds. The net income reported by petitioner, Joe Shoong, for the taxable year was \$6,770.82.

On June 26 and 27, 1944, petitioner, Rose Shoong, purchased at prices ranging from $120\frac{1}{8}$ to $121\frac{7}{8}$, American Telephone & Telegraph [40] Co. 15-year 3% convertible debenture bonds due September 1, 1956, as follows:

Face Amount—\$500,000.

Cost—\$604,348.75.

Commission—\$1,250.

Accrued Interest—\$4,902.92.

Total—\$610,501.67.

In her income tax return for 1944 petitioner, Rose Shoong, reported adjusted gross income of \$100,927.43, and deductions of \$96,235.84, which latter figure included a claim of \$85,607.29 as amortization of bond premiums on American Telephone & Telegraph Co. bonds. She reported a net income for the taxable year of \$4,691.59.

On January 8, 9, and 10, 1945, petitioner, Joe Shoong, sold, at prices ranging from $123\frac{3}{8}$ to 124, his American Telephone & Telegraph Co. debenture bonds, as follows:

Face Amount—\$500,000.

Selling Price—\$617,262.50.

Interest—\$5,446.32.

Commission—(\$1,250).

Tax—(\$200.05).

Ins. & Postage—(\$7.00).

Net—\$621,251.77.

On January 10, 11, 12, 15, and 16, 1945, petitioner, Rose Shoong, sold, at prices ranging from

123 to 123¾, her American Telephone & Telegraph Co. debenture bonds, as follows:

Face Amount—\$500,000.

Selling Price—\$616,522.50.

Interest—\$5,618.32.

Commission—(\$1,252.50).

Tax—(\$250.45).

Net—\$620,637.87.

These debenture bonds were issued under an indenture by the American Telephone & Telegraph Co. and City Bank and Farmers Trust Co., as trustee, dated September 1, 1941. This indenture provided that, at any time between January 1, 1942, and December 31, 1954, unless previously called for redemption, the debenture bonds were convertible into the [41] capital stock of the company at a conversion price of \$140 per share, payable by surrender of \$100 principal amount of debenture bonds and payment to the company of \$40 in cash for each share of capital stock to be issued upon conversion. It also provided that the company should have the option to redeem all or part of the bonds after September 1, 1942. The redemption price to and including August 31, 1944, was to be \$107, plus accrued interest, and from August 31, 1944, to and including August 31, 1948, was to be \$104, plus accrued interest.

The entire issue of the debenture bonds was called for redemption on September 1, 1947, at \$104, plus interest.

The average price of the capital stock of the American Telephone & Telegraph Co. on June 21, 1944, was 160½ per share; on June 26, 1944, 160½ per share; and on June 27, 1944, 160¾ per share.

The price range of these debenture bonds from April 30, 1943, to August 29, 1947, was from 112½ to 157½. The price range of the common stock of the American Telephone & Telegraph Co. during the same period was from 147¼ to 199⅝. During the same period the excess in the sale price of the debenture bonds ranged from \$34.75 to \$42.00.

During the period April 30, 1943, to November 3, 1944, the selling price of Pacific Gas & Electric Co. (Cal.) First Ref. 3¾s bonds ranged from 107⅞ to 112⅞. During the period April 30, 1943, to July 3, 1947, the selling price of Consolidated Edison of N. Y., Inc., debenture bonds 3½s, due April 1, 1956, ranged from 101½ to 108¼. Standard and Poor's Monthly Bond Yield Index Public Utility [42] Bonds Rated A-1 monthly averages during the years 1941 to 1947, inclusive, ranged from 2.583 to 2.925.

The bonds purchased by petitioners, Joe Shoong and Rose Shoong, were not part of the stock in trade of the petitioners, or includible in any inventory of the petitioners at the close of the taxable year, or held by the petitioners primarily for sale to customers in the ordinary course of their trade or business. Petitioners did not, during the calendar year 1944, sell any of the bonds purchased by them, nor did they exercise their privilege of con-

verting these bonds into capital stock of the company.

In each deficiency notice respondent explained his disallowance of the deduction for amortization of bond premium as follows:

The deduction is disallowed since it is held that the amount does not represent amortizable bond premium. It is held that the consideration represents the value of the right to convert the bonds into capital stock of the company.

Petitioner, in reliance upon information that they would be entitled to claim, in the year 1944, a deduction for amortization of the amount by which the cost exceeded the call price, purchased the bonds with the intention of making such a claim for a deduction for amortization and of selling the bonds after holding them for more than six months so that the gain, if any, upon the sale would be subject to tax as long-term capital gain.

The principal issue presented for our decision in these cases has recently been decided by this Court in the case of *Christian W. [43] Korell*, 10 T. C. (Promulgated June 2, 1948). On the authority of this case we decide in favor of the petitioners.

On brief respondent contends for the first time that the commissions paid by the petitioners "are a part of the cost of the securities and are not deductible in any event as ordinary and necessary business expenses." Respondent does not elabo-

rate this contention except by citing three cases including *Helvering v. Winnill*, 305 U. S. 79 and *Spreckels v. Helvering*, 315 U. S. 626. Petitioner correctly points out in reply that there is no question here presented as to whether these commissions should be capitalized or treated as expenses, but, rather, the question is whether, in the amortization of premiums, the commissions paid are to be treated as part of the purchase price. That such a treatment is proper, is recognized by respondent's Regulations 111, section 29.125-6.

Since other minor adjustments not here in issue have been made in petitioner's income taxes for the taxable year.

Decision will be entered under Rule 50. [44]

The Tax Court of the United States
Washington

Docket No. 15475

JOE SHOONG,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Court's Memorandum Findings of Fact and Opinion, entered June 14, 1948, the respondent filed a computation of tax on July 15,

1948. The petitioner filed an acquiescence in said computation, on July 27, 1948, now therefore, it is

Ordered and Decided: That there is a deficiency in income tax of \$136.63 for the calendar year 1944.

Entered: August 9, 1948.

[Seal] /s/ JOHN W. KERN,
Judge. [45]

The Tax Court of the United States
Washington

Docket No. 15476

ROSE SHOONG,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Court's Memorandum Findings of Fact and Opinion, entered June 14, 1948, the respondent filed a computation of tax on July 15, 1948. The petitioner filed an acquiescence in said computation, on July 27, 1948, now, therefore, it is

Ordered and Decided: That there is a deficiency in income tax of \$557.44 for the calendar year 1944.

Entered: August 9, 1948.

[Seal] /s/ JOHN W. KERN,
Judge. [46]

In the United States Court of Appeals
for the Ninth Circuit

T. C. Docket No. 15475

COMMISSIONER OF INTERNAL REVENUE,
Petitioner on Review,

vs.

JOE SHOONG,

Respondent on Review.

PETITION FOR REVIEW

To the Honorable Judges of the United States
Court of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on August 9, 1948, ordering and deciding that there is a deficiency in income tax of \$136.63 for the calendar year 1944. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The respondent on review, Joe Shoong, filed his individual income tax return for the calendar year 1944 with the Collector of Internal Revenue for the First District of California at San Francisco, California, whose office is within the jurisdiction of the United States Court of Appeals for the Ninth Circuit, wherein this review is sought.

NATURE OF CONTROVERSY

The issue is whether taxpayer is entitled to the deduction claimed for the year 1944 for amortiza-

tion of bond premium representing the [47] excess of the amount of the basis of certain American Telephone & Telegraph Co. 15-year 3% convertible debenture bonds over the amount payable on call date prior to maturity.

In his return for the year 1944, taxpayer deducted \$81,879.94, the difference between the purchase price and the call price or maturity price on the theory that the bond could have been called in that year, and in such event the entire premium would have been lost. In determining the deficiency for the year 1944, the Commissioner determined that no part of the bond premium was deductible under Sections 23(v) and 125 of the Internal Revenue Code as amortization of the premium over the call or maturity price of the bond for the reason that the excess of the purchase price over par represented the market value of the conversion option and was not a true bond premium. However, the Tax Court concluded that the bond premium was amortizable in full in 1944 under Sections 23(v) and 125 of the Internal Revenue Code notwithstanding that the premium may have been due entirely to the accompanying privilege to buy into obligor's stock at a price below the current market.

/s/ THERON L. CAUDLE,

Assistant Attorney General.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue, Counsel for Petitioner on Review.

[Endorsed]: T.C.U.S. Filed Oct. 25, 1948. [48]

[Title of U. S. Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR
REVIEW

To: Walter J. Renz, C.P.A., 630 Russ Building,
San Francisco 4, California

You are hereby notified that the Commissioner of Internal Revenue did, on the 25th day of October, 1948, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Court of Appeals for the Ninth Circuit of the decision of the Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 25th day of October, 1948.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue, Counsel for Petitioner on Review.

(Acknowledgment of Service.)

[Endorsed]: T.C.U.S. Filed Nov. 9, 1948. [49]

[Title of U. S. Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR
REVIEW

To: Mr. Joe Shoong, 929 Market Street, San Francisco, California

You are hereby notified that the Commissioner of Internal Revenue did, on the 25th day of October, 1948, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Court of Appeals for the Ninth Circuit of the decision of the Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 25th day of October, 1948.

/s/ CHARLES OLIPHANT.

Chief Counsel, Bureau of Internal Revenue, Counsel for Petitioner on Review.

(Acknowledgment of Service.)

[Endorsed]: T.C.U.S. Filed Nov. 9, 1948. [50]

[Title of U. S. Court of Appeals and Cause.]

PETITION FOR REVIEW

To the Honorable Judges of the United States
Court of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on August 9, 1948, ordering and deciding that there is a deficiency in income tax of \$557.44 for the calendar year 1944. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The respondent on review, Rose Shoong, filed her individual income tax return for the calendar year 1944 with the Collector of Internal Revenue for the First District of California at San Francisco, California, whose office is within the jurisdiction of the United States Court of Appeals for the Ninth Circuit, wherein this review is sought.

NATURE OF CONTROVERSY

The issue is whether taxpayer is entitled to the deduction claimed for the year 1944 for amortization of bond premium representing the [51] excess of the amount of the basis of certain American Telephone & Telegraph Co. 15-year 3% convertible debenture bonds over the amount payable on call date prior to maturity.

In her return for the year 1944, taxpayer de-

ducted \$85,607.29, the difference between the purchase price and the call price or maturity price on the theory that the bond could have been called in that year, and in such event the entire premium would have been lost. In determining the deficiency for the year 1944, the Commissioner determined that no part of the bond premium was deductible under Sections 23(v) and 125 of the Internal Revenue Code as amortization of the premium over the call or maturity price of the bond for the reason that the excess of the purchase price over par represented the market value of the conversion option and was not a true bond premium. However, the Tax Court concluded that the bond premium was amortizable in full in 1944 under Sections 23(v) and 125 of the Internal Revenue Code notwithstanding that the premium may have been due entirely to the accompanying privilege to buy into obligor's stock at a price below the current market.

/s/ THERON L. CAUDLE,

Assistant Attorney General.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue, Counsel for Petitioner on Review.

[Endorsed]: T.C.U.S. Filed Oct. 25, 1948. [52]

[Title of U. S. Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR
REVIEW

To: Mrs. Rose Shoong, 929 Market Street, San
Francisco, California.

You are hereby notified that the Commissioner of Internal Revenue did, on the 25th day of October, 1948, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Court of Appeals for the Ninth Circuit of the decision of the Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 25th day of October, 1948.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Coun-
sel for Petitioner on Review.

(Acknowledgment of Service.)

[Endorsed]: T.C.U.S. Filed Nov. 9, 1948. [53]

[Title of U. S. Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR
REVIEW

To: Walter J. Renz, C.P.A., 630 Russ Building,
San Francisco 4, California.

You are hereby notified that the Commissioner of Internal Revenue did, on the 25th day of October, 1948, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of the Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 25th day of October, 1948.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Counsel
for Petitioner on Review.

(Acknowledgment of Service.)

[Endorsed]: T.C.U.S. Filed Nov. 9, 1948. [54]

[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS

Now Comes the Commissioner of Internal Revenue, the petitioner on review herein, by his attorneys, Theron L. Caudle, Assistant Attorney General, and Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and hereby asserts the follow-

ing errors on which he intends to rely in this review:

That the Tax Court of the United States erred:

1. In holding and deciding that the premiums paid for bonds callable for redemption on 30 days' notice is amortizable in full in year of acquisition under Sections 23(v) and 125 of the Internal Revenue Code, notwithstanding the premium may have been due entirely to accompanying privilege of converting into obligor's stock at a price below current market value.

2. In holding and deciding on the authority of its decision in *Christian W. Korell*, June 2, 1948, 10 T. C. (No. 128) that the phrase in Sec. 29.125-5 of Regulations 111 "on a date certain specified in the bond" is a gratuitous addition by the Commissioner not founded upon the statutory language and is directly in conflict with its legislative history. [55]

3. In failing to reject the petitioner's claim for amortization of bond premiums because they were not true bond premiums within the intendment of the Statute and Regulations, such as would normally be amortized out of gross interest earnings in order to exclude capital recovered under the guise of interest.

4. In failing to hold that the deduction is not within the intendment of the Statute and Regulations, for the reason that the purchase of the bonds, the deduction of the bond premiums in full and the

sale of the bonds shortly after capital gain rates became applicable, were all parts of a plan of tax avoidance.

5. In failing to hold and decide that no part of the so-called premium on the 15-year 3% convertible debenture bonds of the American Telephone and Telegraph Co. was deductible in the year 1944 under Sections 23(v) and 125 of the Internal Revenue Code as amortization of the premium over the call price for the reason that the excess of the purchase price over par represented the market value of the conversion option and was not a true bond premium.

6. In entering its decision where in it ordered and decided that there is a deficiency of \$136.63 in income tax for the year 1944.

7. In that its decision is not supported by the evidence.

8. In that its decision is contrary to law and regulations.

/s/ THERON L. CAUDLE,
Assistant Attorney General.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Counsel for Petitioner on Review.

(Statement of Service attached.)

[Endorsed]: T.C.U.S. Filed Dec. 3, 1948. [56]

[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS

Now Comes the Commissioner of Internal Revenue, the petitioner on review herein, by his attorneys, Theron L. Caudle, Assistant Attorney General, and Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and hereby asserts the following errors on which he intends to rely in this review:

That the Tax Court of the United States erred:

1. In holding and deciding that the premiums paid for bonds callable for redemption on 30 days' notice is amortizable in full in year of acquisition under Sections 23(v) and 125 of the Internal Revenue Code, notwithstanding the premium may have been due entirely to accompanying privilege of converting into obligor's stock at a price below current market value.

2. In holding and deciding on the authority of its decision in *Christian W. Korell*, June 2, 1948, 10 T. C. (No. 128) that the phrase in Sec. 29.125-5 of Regulations 111 "on a date certain specified in the bond" is a gratuitous addition by the Commissioner not founded upon the statutory language and is directly in conflict with its legislative history. [57]

3. In failing to reject the petitioner's claim for amortization of bond premiums because they were not true bond premiums within the intendment of the Statute and Regulations, such as would normally be amortized out of gross interest earnings

in order to exclude capital recovered under the guise of interest.

4. In failing to hold that the deduction is not within the intendment of the Statute and Regulations, for the reason that the purchase of the bonds, the deduction of the bond premiums in full and the sale of the bonds shortly after capital gain rates became applicable, were all parts of a plan of tax avoidance.

5. In failing to hold and decide that no part of the so-called premium on the 15-year 3% convertible debenture bonds of the American Telephone and Telegraph Co. was deductible in the year 1944 under Sections 23(v) and 125 of the Internal Revenue Code as amortization of the premium over the call price for the reason that the excess of the purchase price over par represented the market value of the conversion option and was not a true bond premium.

6. In entering its decision wherein it ordered and decided that there is a deficiency of \$557.44 in income tax for the year 1944.

7. In that its decision is not supported by the evidence.

8. In that its decision is contrary to law and regulations.

/s/ THERON L. CAUDLE.

Assistant Attorney General.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue, Counsel for Petitioner on Review.

(Statement of Service attached.)

[Endorsed]: T.C.U.S. Filed Dec. 3, 1948. [58]

[Title of U. S. Court of Appeals and Causes 15475-6]

PETITIONER'S DESIGNATION OF THE
PORTION OF THE RECORD TO
BE PRINTED

To the Clerk of the United States Court of Appeals
for the Ninth Circuit:

Comes now the Commissioner of Internal Revenue, the petitioner on review herein, by his counsel of record, and complying with the rules of this Court pertaining to designation of the portions of the record to be printed, states that he relies upon the entire record as certified by the Clerk of The Tax Court of the United States and directs that the following portions of the record so certified be printed as the record on review:

1. Docket entries of all proceedings before The Tax Court of the United States in Dockets Nos. 15475 and 15476.

2. Pleadings: (a) Petitions, together with attached Exhibits A (notices and statement of deficiency). (b) Answers. [59]

3. Stipulation of facts, omitting Exhibit A-1 referred to therein, being joint exhibit A-1 in item 6.

4. Memorandum Findings of Fact, Opinion and Decision.

5. Petitions for review.

6. Order of the Ninth Circuit Re: Consolida-

tion of the two causes and the transmission of the original Joint Exhibits A-1 and B-2 and Respondent's Exhibits C to I, inclusive, introduced in evidence at the hearing before the Tax Court.

7. Statements of points to be relied upon by the Commissioner.

8. Designation of the record, proceedings, and evidence to be contained in the record on review.

/s/ THERON L. CAUDLE,
Assistant Attorney General.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Counsel for Petitioner on Review.

(Statement of Service attached.)

[Endorsed]: T.C.U.S. Filed Dec. 3, 1948. [60]

[Title of U. S. Court of Appeals and Causes 15475-6]

ORDER

Upon Motion, It Is Ordered:

1. That the above-captioned causes be and they are hereby consolidated for briefing, hearing, argument and decision:

2. That the Clerk of the Tax Court of the United States certify and transmit to this Court a single consolidated transcript of record on review in the above-captioned causes:

3. That the original exhibits received in evi-

dence in the above-captioned causes, consisting of Joint Exhibits A-1 and B-2, and Respondent's Exhibits C to I, inclusive, instead of being fully set forth in the transcript of the record to be certified by the Clerk of the Tax Court to the Clerk of this Court, may be transmitted by the Clerk of the Tax Court to the Clerk of this Court. [61]

4. That said exhibits need not be printed in the record on review herein but may be referred to by counsel in their respective briefs and on oral argument, or reproduced, in whole or in part, in an appendix to their respective briefs, and considered by the Court with the same force and effect as if included in the printed record on review:

5. That the time within which to file the record on review in the above-captioned causes with this Court be, and the same is, extended to and including January 1, 1949. W.D.

6. That the Clerk of this Court transmit a certified copy of this order to the Clerk of The Tax Court of the United States, Washington 25, D. C., to be by him incorporated in the transcript of the record on review herein.

Done at San Francisco, California, this 26th day of November, A.D. 1948.

[Seal]

WILLIAM DENMAN,

United States Circuit Judge.

[Endorsed]: Filed November 26, 1948. Paul P. O'Brien, Clerk.

[Endorsed]: T.C.U.S. Filed Dec. 1, 1948. [62]

[Title of U. S. Court of Appeals and Cause 15475-6.]

DESIGNATION OF CONTENTS OF RECORD ON REVIEW

To the Clerk of the Tax Court of the United States:

You will please prepare, transmit and deliver to the Clerk of the United States Court of Appeals for the Ninth Circuit copies duly certified as correct of the following documents and records relating to the petitions for review heretofore filed by the Commissioner of Internal Revenue in the above-captioned causes:

1. Docket entries of all proceedings before the Tax Court in Docket Nos. 15475 and 15476.

2. Pleadings: (a) Petitions, together with attached Exhibit A (notice and statement of deficiency). (b) Answers.

3. Stipulation of facts.

4. Memorandum Findings of Fact and Opinion.

5. Decisions. [63]

6. Petitions for review, together with proofs of service of notice of filing and of service of a copy of each petition for review.

7. Order of the United States Court of Appeals for the Ninth Circuit directing the consolidation of the two causes and transmission of the original exhibits, viz.: Joint Exhibits A-1 and B-2 and Respondent's Exhibits C to I, inclusive, received in evidence at the hearing before the Tax Court.

8. Statements of Points to be relied upon by the Commissioner.

9. All orders made by the Court with respect to enlargement of time for the preparation and transmission of the certified transcript of the record on review.

10. Designation of the portions of the record on review to be printed.

11. This designation of contents of the record on review.

Said transcript is to be prepared, certified, and transmitted as required by law and the rules of the United States Court of Appeals for the Ninth Circuit.

/s/ THERON L. CAUDLE,
Assistant Attorney General.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Counsel for Petitioner on Review.

[Endorsed]: T.C.U.S. Filed Dec. 3, 1948. [64]

[Title of Tax Court and Causes 15475-6.]

CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States, do hereby certify that the foregoing pages, 1 to 64, inclusive, contain and are a true copy of the transcript of record, papers, and

proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 17th day of December, 1948.

[Seal] /s/ VICTOR S. MERSCH,
Clerk, The Tax Court of the
United States.

[Endorsed]: No. 12136. United States Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. Joe Shoong, Respondent. Commissioner of Internal Revenue, Petitioner, vs. Rose Shoong, Respondent. Transcript of the Record. Petitions to Review Decisions of The Tax Court of the United States.

Filed: December 21, 1948.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.